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SERVICE DATE - DECEMBER 23, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34319

CONSOLIDATED RAIL CORPORATION —
DECLARATORY ORDER PROCEEDING

Decided: December 22, 2003

By decision served October 10, 2003, the Board instituted a declaratory order proceeding to resolve a controversy regarding whether the preemption provision of 49 U.S.C. 11321(a) applies to a matter in dispute between Consolidated Rail Corporation (Conrail) and AT&T Communications, Inc. (AT&T). In AT&T Communications, Inc. v. Consolidated Rail Corporation, Civil Action No. 03-147 (Sept. 29, 2003 order), the United States District Court for the Eastern District of Pennsylvania referred to the Board the same three preemption questions that Conrail had previously submitted to the Board. The Court asked the Board to advise the Court of its answers to the referred questions by December 29, 2003. The Board issued an expedited procedural schedule in this case designed to permit the Board to address the questions referred and resolve the preemption controversy within that time frame.

By joint motion filed December 11, 2003, Conrail and AT&T have asked the Board to hold this proceeding in abeyance until February 4, 2004. Conrail and AT&T have advised that, although they have executed a term sheet agreement in connection with settlement of the case that will moot the proceeding before the Board, they likely will not be able to finalize their settlement agreement before December 29th.

By letter filed December 19, 2003, Conrail has advised that the Court, by order entered December 18, 2003, has provided for an additional 38 days, or until February 4, 2004, for the Board to advise the Court of its answers to the questions referred to it.

In view of the ongoing efforts to settle the underlying dispute, and in light of the Court's December 18th order, the joint motion will be granted, and this proceeding will be held in abeyance until February 4, 2004.

Although Conrail and AT&T anticipate that their negotiations will produce a settlement, some thought must be given to the chance that the negotiations will ultimately fail. A "last minute" failure would create a difficult situation for the Board, because the Court, in its most recent order, has essentially directed the Board to answer the three referral questions no later than February 4, 2004. If negotiations fail, the Board will not be able to meet this deadline unless it has been advised, sufficiently in advance of February 4th, that a decision containing the answers to the three referral questions will be

needed on that date. The parties should therefore advise the Board, no later than January 21, 2004, of the status of their negotiations. If negotiations have not then reached a final conclusion, the parties should further advise the Board, no later than January 21, 2004, that they have made arrangements to seek from the Court a further extension of the deadline for the Board's decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered

1. The joint motion filed December 11, 2003, is granted, and this proceeding will be held in abeyance until February 4, 2004.

2. Conrail and AT&T should advise the Board, no later than January 21, 2004, of the status of their negotiations. If negotiations have not then reached a final conclusion, Conrail and AT&T should further advise the Board, no later than January 21, 2004, that they have made arrangements to seek from the Court a further extension of the deadline for the Board's decision.

3. A copy of this decision will be served on:

Honorable Cynthia M. Rufe, United States District Judge
United States District Court for the Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street, Room # 4000
Philadelphia, PA 19106

RE: Civil Action No. 03-147 (E.D. Pa.)

4. This decision is effective on the service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary